REMARKS

This response is intended as a full and complete response to the non-final Office Action mailed March 7, 2006. In the Office Action, the Examiner notes that claims 1-28 are pending and rejected. By this response, claim 1 has been amended.

In view of the following discussion, Applicant submits that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103.

It is to be understood that Applicants do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant responsive amendments.

REJECTIONS

35 U.S.C. §103

Claims 1-4 and 7-11

The Examiner has rejected claims 1-4 and 7-11 under 35 U.S.C. §103(a) as being unpatentable over Ellis (US2003/0149988A1, hereinafter "Ellis") in view of Berberet (US2003/0226150, hereinafter "Berberet"). Applicants respectfully traverse the rejection.

The Examiner's use of the Berberet application as prior art against Applicants' invention is improper. More specifically, the Berberet publication was filed as a PCT on January 19, 2001. The present application was filed on November 27, 2001, but claims priority to provisional application with a priority date of November 27, 2000. Since the priority date of the present application precedes the PCT filing date of the Berberet application, the Berberet application is not prior art to Applicants' invention.

Applicants note that the Berberet application claims priority to a provisional patent application filed January, 27, 2000 (hereinafter referred to as the "Berberet provisional application"). Under 35 U.S.C. §102(e), the filing date of a provisional patent application may be the effective filing date of a United States patent claiming priority to such provisional patent application only to the extent that such provisional patent application supports the subject matter used to make the rejection. See MPEP

§706.02(f). Thus, the Examiner must provide some evidence that the Berberet provisional application supports the subject matter of the published Berberet application used in the rejection. Specifically the Applicants are questioning whether the Berberet provisional application contains the subject matter used by the Examiner in the rejection.

Notably, there is no prohibition against the inclusion of subject matter in a non-provisional patent application that was not described in a prior provisional application to which the non-provisional application claims priority. That is, a non-provisional patent application may include new material not described in the provisional application. It is axiomatic that such new material does not receive the benefit of the provisional application. Applicant is not aware of any law, rule, or otherwise that all subject matter described in a non-provisional application is presumed to be described in a provisional application to which the non-provisional application claims priority. Thus, it is possible that the subject matter in the published Berberet application relied on by the Examiner is not described in the Berberet provisional application (i.e., the subject matter in the published Berberet application relied on by the Examiner may constitute new material with respect to the Berberet provisional application). In such a case, the cited subject matter would not constitute prior art to Applicant's invention. Therefore, in order to set forth a prima facie case, the Examiner must provide evidence that the Berberet provisional application supports the subject matter of the published Berberet application used by the Examiner in the rejection.

Furthermore, the Examiner uses Ellis application which as a filing date of February 6, 2003, which is after the priority date of November 27 2000 of the present application. Since the priority date of the present application precedes the filing date of the Ellis application, the Ellis application is not prior art to Applicants' invention.

Applicants note that the Ellis application claims priority to a parent patent application filed June 11, 1999 (hereinafter referred to as the "Ellis parent application"). Similar to the reasoning above, the Examiner must provide some evidence that the Ellis parent application supports the subject matter of the published Ellis application used in the rejection. Specifically, the Applicants are questioning whether the Ellis parent application contains the subject matter used by the Examiner in the rejection.

As discussed above, Applicants respectfully submit that the published Berberet application and the Ellis application are not proper prior art without evidence that their respective provisional/parent applications support the subject matter of the respective published applications used by the Examiner in the rejection. As such, the alleged combination of Ellis with Berberet as a rejection against claims 1-4 and 7-11 is improper because Ellis and Berberet are not proper prior art references. Therefore, Applicants contend that claims 1 and 2 fully satisfy the requirements of 35 U.S.C. §103. Claims 3-4 and 7-11 depend directly from independent claim 2 and recite additional limitations therefrom. Accordingly, for at least the same reasons discussed above, these dependent claims also are patentable under 35 U.S.C. §103 over Ellis in view of Berberet.

Therefore, Applicants respectfully request that the Examiner's rejection be withdrawn.

Claims 5, 6 and 12-27

Claims 5, 6 and 12-27 are rejected under 35 U.S.C. §103(a) as being unpatentable over Ellis in view of Berberet in further view of Gordon (US2003/0163824A1). Applicants respectfully traverse the Examiner's rejection.

Claims 5-6

Claims 5-6 depend directly from independent claim 2. For at least the reasons discussed above Ellis and Berberet are not prior art. As such, independent claim 2 is patentable under 35 U.S.C. §103(a) over Ellis in view of Berberet. Gordon, singly, does not teach or suggest claims 5-6 as a whole. As such, Applicants submit that dependent claims 5-6 are patentable under 35 U.S.C. §103(a) over Ellis in view of Berberet in further view of Gordon.

Claims 12- 28

Independent claims 12 and 28 recite relevant limitations similar to those recited in independent claims 1 and 2. Moreover, for at least the reasons discussed above, the Ellis and Berberet references are not prior art and; therefore, independent claims 12 and 28 are patentable under 35 U.S.C. §103(a) over Ellis in view of Berberet. Furthermore, Gordon, singly, does not teach or suggest claims 12 and 28 as a whole.

As such, Applicants submit that independent claims 12 and 28 are patentable under 35 U.S.C. §103 over Ellis in view of Berberet in further view of Gordon. Claims 13-27 depend directly or indirectly from independent claim 12 and recite additional limitations therefrom. Accordingly, for at least the same reasons discussed above, these dependent claims also are patentable under 35 U.S.C. §103 over Ellis in view of Berberet in further view of Gordon.

Therefore, Applicants respectfully request that the Examiner's rejection be withdrawn.

CONCLUSION

Thus, Applicants submit that none of the claims presently in the application are obvious under the provisions of 35 U.S.C. §103. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Jasper Kwoh at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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Eamon J. Wall
Registration No. 39,414
Attorney for Applicant(s)

PATTERSON & SHERIDAN, LLP
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702
Telephone: 732-530-9404
Facsimile: 732-530-9808

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